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Bass & Bass Security, d/b/a Bass & Bass Watchguard and Patrol and Local 819, Security Workers of America. Case 29–CA–25420

October 31, 2005

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification.

On October 31, 2003, the Board issued a Decision and Order¹ that, among other things, ordered the Respondent to make whole unit employees for any loss of earnings and other benefits suffered as a result of its unlawful unilateral changes to wages and other benefits made since November 3, 2002; restore unit employees' health benefits and make all required benefit fund payments or contributions that have not been made since November 3, 2002; and reimburse unit employees for any expenses resulting from its unlawful termination of their health benefits. On April 28, 2004, the United States Court of Appeals for the Second Circuit entered its judgment enforcing in full the Board's Order.²

A controversy having arisen over the amount of holiday pay and medical expenses due the unit employees and the contributions due the United Health and Welfare Fund, on August 18, 2005, the Regional Director issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order. The compliance specification notified the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.³

On September 15, 2005, the Acting General Counsel filed with the Board a motion for default judgment, with exhibits attached. On September 19, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response. The

allegations in the motion and in the compliance specification are therefore undisputed.

Ruling on the Motion for Default Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Default Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the Acting General Counsel's Motion for Default Judgment. Accordingly, we conclude that the net backpay due the unit employees and the contributions due the Fund are as stated in the compliance specification, and we will order the Respondent to pay those amounts to the employees and the Fund, plus interest accrued on the backpay amounts to the date of payment, minus tax withholdings required by Federal, State, and local laws.⁴

ORDER

The National Labor Relations Board orders that the Respondent, Bass & Bass Security, d/b/a Bass & Bass Watchguard and Patrol, St. Albans, New York, its officers, agents, successors, and assigns, shall make whole the individuals named in the attached Appendices A and B, by paying them the amounts opposite their names, plus interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and minus tax withholdings required by Federal, State, and local laws. The Respondent also shall make whole those individuals for payments due the United Health and Welfare Fund by paying the Fund the amount set forth in the attached Appendix C, plus any additional amounts accruing on the fund contributions, as prescribed in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979).

In summary, the amounts owed by the Respondent are as follows:

¹ 340 NLRB 962.

² 04-0738.

³ Copies of the compliance specification were sent to the Respondent by certified mail and by regular mail. The Respondent has not claimed the copy sent by certified mail. The copy sent by regular mail has not been returned as undelivered. It is well settled that a respondent's failure or refusal to accept certified mail or to provide for appropriate service cannot serve to defeat the purposes of the Act. See, e.g., *I.C.E. Electric, Inc.*, 339 NLRB 247 fn. 2 (2003), and cases cited there. In any event, the failure of the Postal Service to return documents sent by regular mail indicates actual receipt. See, e.g., *I.C.E. Electric*, supra.

⁴ The compliance specification states that the Respondent has failed to provide all its payroll records, as required by the Board's Order and the Court's Judgment, and an Order issued by the United States District Court for the Eastern District of New York requiring compliance with a subpoena duces tecum issued by the Board on November 9, 2004. The Regional Director reserved the right to amend the compliance specification to include other, unnamed unit employees, upon receipt of additional payroll records.

Holiday Pay due to unit employees: \$19,910.56
 Out-of-Pocket Medical Expenses: \$ 231.76
 Health and Welfare Fund Contributions: \$33,660.00
 TOTAL: \$53,802.32

Wilma B. Liebman, Member

Dated, Washington, D.C. October 31, 2005

Peter C. Schaumber, Member

Robert J. Battista, Chairman

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

Holiday Pay

| LAST NAME | FIRST NAME | HOURLY WAGE RATE | | | | | | | HOLIDAYS | | | | | TOTAL |
|---------------|-------------|------------------|---------|---------|---------|---------|---------|---------|-----------|----------|----------|----------|-----------|--------|
| | | 4Q 2002 | 1Q 2003 | 2Q 2003 | 3Q 2003 | 4Q 2003 | 1Q 2004 | 2Q 2004 | PRES 2003 | MEM 2003 | IND 2003 | LAB 2003 | PRES 2004 | |
| Acheam-pong | Alex | | - | | | | 10.10 | 10.10 | - | - | - | - | 80.80 | 80.80 |
| Adesi | Eric Oduro | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | - | - | 77.52 | 77.52 | 77.52 | 77.52 | - | 310.08 |
| Ali | Mohammed | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 80.80 |
| Asiedu | Isaac | - | - | | | | | 10.10 | - | - | - | - | - | - |
| Baidoo | Lawrence | - | - | | | | 10.10 | 10.10 | - | - | - | - | 80.80 | 80.80 |
| Baxter | Noel | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Boakyre | Augustina | - | - | | | | 10.10 | - | - | - | - | - | 80.80 | 80.80 |
| Brown Sr. | Rene | 11.69 | | | | | - | - | - | - | - | - | - | - |
| Brown | Scian | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 12.10 | 12.10 | 77.52 | 77.52 | 77.52 | 77.52 | 96.80 | 406.88 |
| Burgos | Eduardo | 11.69 | 11.69 | 11.69 | 11.69 | 11.69 | 12.10 | 12.10 | 93.52 | 93.52 | 93.52 | 93.52 | 96.80 | 470.88 |
| Chaudhry | Mohammad | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Cook | James | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Crawley | Gene | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 12.10 | 12.10 | 77.52 | 77.52 | 77.52 | 77.52 | 96.80 | 406.88 |
| Delain | oDIS | - | - | | | | 10.10 | 10.10 | - | - | - | - | 80.80 | 80.80 |
| Diaz | Victor | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.00 |
| Dibble | Shateema | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | - | - | 77.52 | 77.52 | 77.52 | 77.52 | - | 310.08 |
| Echandy | Rosa | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | - | - | 77.52 | 77.52 | 77.52 | 77.52 | - | 310.08 |
| Fogle | Joseph | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | - | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Frazier | Danielle | - | - | | | | 10.10 | 10.10 | - | - | - | - | 80.80 | 80.80 |
| Gonzalez | Donna | 9.69 | 11.69 | 11.69 | 11.69 | 11.69 | - | - | 93.52 | 93.52 | 93.52 | 93.52 | - | 374.08 |
| Gonzalez | Natasha | - | - | | | | 10.10 | 10.10 | - | - | - | - | 80.80 | 80.80 |
| Green | Ryan | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Halikias | Themis | - | - | | | | 10.10 | 10.10 | - | - | - | - | 80.80 | 80.80 |
| Herring | Claudette | 11.69 | 11.69 | 11.69 | 11.69 | 11.69 | 12.10 | 12.10 | 93.52 | 93.52 | 93.52 | 93.52 | 96.80 | 470.88 |
| Huelgo | Hugo | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Hughes | George | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Jackson | Napoleon | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | - | - | 77.52 | 77.52 | 77.52 | 77.52 | - | 310.08 |
| James | Craig | 11.69 | 11.69 | 11.69 | 11.69 | 11.69 | 12.10 | 12.10 | 93.52 | 93.52 | 93.52 | 93.52 | 96.80 | 470.88 |
| Johnson | Carol | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Lopez | Edwin | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Mack | Lamont | - | - | | | | 10.10 | 10.10 | - | - | - | - | 80.80 | 80.80 |
| Maharaj | Mohan | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | - | - | 77.52 | 77.52 | 77.52 | 77.52 | - | 310.08 |
| Maraj | Jelani | | | | | | 10.10 | - | - | - | - | - | 80.80 | 80.80 |
| McColley, Jr. | Walter | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| McDonald | Carol | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | - | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Mendah | John | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Merland | Monel | - | - | | | | 10.10 | 10.10 | - | - | - | - | 80.80 | 80.80 |
| Mojica | Lexter | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Murray | Rah-King | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | - | - | 77.52 | 77.52 | 77.52 | 77.52 | - | 310.08 |
| Myles | Sonia | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Nieves | Edgar Jovan | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Osmond | Yvette | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Pacheco | Augustine | 9.69 | 11.69 | 11.69 | 11.69 | 11.69 | 10.10 | 10.10 | 93.52 | 93.52 | 93.52 | 93.52 | 80.80 | 454.88 |
| Pierre | Dudley | 11.69 | 11.69 | 11.69 | 11.69 | 11.69 | 12.10 | 12.10 | 93.52 | 93.52 | 93.52 | 93.52 | 96.80 | 470.88 |

| | | | | | | | | | | | | | | |
|----------|----------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|--------|
| Quiros | Ovalle | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | - | - | 77.52 | 77.52 | 77.52 | 77.52 | - | 310.08 |
| Ralph | James | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | - | - | 77.52 | 77.52 | 77.52 | 77.52 | - | 310.08 |
| Rivera | Michelle | - | - | | | | 12.10 | 12.10 | - | - | - | - | 96.80 | 96.80 |
| Robinson | Gary | - | - | | | | 10.10 | 10.10 | - | - | - | - | 80.80 | 80.80 |
| Roman | Audelis | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |

APPENDIX A

Holiday Pay—Continued

| LAST NAME | FIRST NAME | HOURLY WAGE RATE | | | | | | | HOLIDAYS | | | | | TOTAL |
|-----------|------------|------------------|---------|---------|---------|---------|---------|---------|-----------|----------|----------|----------|-----------|-----------|
| | | 4Q 2002 | 1Q 2003 | 2Q 2003 | 3Q 2003 | 4Q 2003 | 1Q 2004 | 2Q 2004 | PRES 2003 | MEM 2003 | IND 2003 | LAB 2003 | PRES 2004 | |
| Rossmango | Michael | 11.69 | 11.69 | 11.69 | 11.69 | 11.69 | 12.10 | 12.10 | 93.52 | 93.52 | 93.52 | 93.52 | 96.80 | 470.88 |
| Ruiz | Robert | 11.69 | 9.69 | 9.69 | 9.69 | 9.69 | 12.10 | 12.10 | 77.52 | 77.52 | 77.52 | 77.52 | | |
| Sampson | Clyde | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Santiago | Albert | 11.69 | 9.69 | 11.69 | 11.69 | 11.69 | 12.10 | 12.10 | 93.52 | 93.52 | 93.52 | 93.52 | 96.80 | 470.88 |
| Saunders | Addie | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Scott | Jacqueline | - | - | | | | 10.10 | 10.10 | - | - | - | - | 80.80 | 80.80 |
| Sealey | Aubyn | - | 12.00 | 12.00 | 12.00 | 12.00 | - | - | 96.00 | 96.00 | 96.00 | 96.00 | - | 384.00 |
| Singh | Dennis | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Skipper | Stack | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Smith | Anthony | 11.69 | 11.69 | 11.69 | 11.69 | 11.69 | 12.10 | 12.10 | 93.52 | 93.52 | 93.52 | 93.52 | 96.80 | 470.88 |
| Stevens | Patela | - | - | | | | 10.10 | 10.10 | - | - | - | - | 80.80 | 80.80 |
| Taylor | LaToya | - | - | | | | 10.10 | 10.10 | - | - | - | - | 80.80 | 80.80 |
| Vailes | Jodi | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | 10.10 | 10.10 | 77.52 | 77.52 | 77.52 | 77.52 | 80.80 | 390.88 |
| Weston | Robert | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | - | - | 77.52 | 77.52 | 77.52 | 77.52 | - | 310.08 |
| Williams | Kensley | 11.69 | 11.69 | 11.69 | 11.69 | 11.69 | 12.10 | 12.10 | 93.52 | 93.52 | 93.52 | 93.52 | 96.80 | 470.88 |
| Williams | Lakisha | 9.69 | 9.69 | 9.69 | 9.69 | 9.69 | - | - | 77.52 | 77.52 | 77.52 | 77.52 | - | 310.08 |
| | TOTAL | | | | | | | | 3,899.44 | 3,899.44 | 3,899.44 | 3,899.44 | 4,312.80 | 19,910.56 |

APPENDIX B

Out-of-Pocket Medical Expenses

| LAST NAME | FIRST NAME | EXPENSE |
|-----------|------------|---------|
| Huelgo | Hugo | 81.76 |
| Singh | Dennis | 150.00 |
| TOTAL | | 231.76 |

APPENDIX C

Welfare Fund

| LAST NAME | FIRST NAME | 4Q 2002 | 1Q 2003 | 2Q 2003 | 3Q 2003 | 4Q 2003 | 1Q 2004 | TOTAL |
|--------------|------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|--------|
| | | 2 months @ \$55.00 per month | 3 months @ \$55.00 per month | 3 months @ \$55.00 per month | 3 months @ \$55.00 per month | 3 months @ \$55.00 per month | 3 months @ \$55.00 per month | |
| Ali | Mohammed | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Baxter | Noel | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Burgos | Eduardo | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Chaudhry | Mohammad | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Crawley | Gene | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Diaz | Victor | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Echandy | Rosa | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Gonzalez | Donna | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Green | Ryan | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Huelgo | Hugo | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Hughes | George | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| James | Craig | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Johnson | Carol | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Lopez | Edwin | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Maharaj | Mohan | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| McColley Jr. | Walter | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| McDonald | Carol | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |

APPENDIX C
Welfare Fund—Continued

| LAST NAME | FIRST NAME | 4Q 2002 | 1Q 2003 | 2Q 2003 | 3Q 2003 | 4Q 2003 | 1Q 2004 | TOTAL |
|-----------|-------------|------------------------------------|------------------------------------|------------------------------------|------------------------------------|------------------------------------|------------------------------------|-----------|
| | | 2 months @ \$55.00 per month | 3 months @ \$55.00 per month | 3 months @ \$55.00 per month | 3 months @ \$55.00 per month | 3 months @ \$55.00 per month | 3 months @ \$55.00 per month | |
| Mojica | Lexter | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Myles | Sonia | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Nieves | Edgar Jovan | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Pacheco | Augustine | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Pierre | Dudley | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Quiros | Ovalle | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Ralph | James | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Roman | Audelis | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Rossmango | Michael | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Ruiz | Robert | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Sampson | Clyde | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Santiago | Albert | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Saunders | Addie | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Singh | Dennis | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Smith | Anthony | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Vailes | Jodi | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Weston | Robert | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Williams | Kensley | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| Williams | Lakisha | 110 | 165 | 165 | 165 | 165 | 165 | 935.00 |
| | TOTAL | 3960 | 5940 | 5940 | 5940 | 5940 | 5940 | 33,660.00 |